



FOR CLERK USE ONLY
City Council

Item No. _____

CITY COUNCIL AGENDA FACT SHEET

Administration _____

Department _____

November 17, 2009 _____

Requested Date _____

1. Request:

Council Approval ☒

Other (specify) _____ ☐

Information Only/
Presentation ☐

Hearing ☐

2. Requested Action:

Adopt Resolution delegating authority and establishing procedures for industrial disability retirement determination for employee members of the California Public Employee's Retirement System (CALPERS).

3. Fiscal Impact:

Revenue:

Increase ☐

Decrease ☐

Cost:

Increase ☐

Decrease ☐

Does Not Apply ☒

Source: _____

Amount: \$ _____

Source: _____

Amount: \$ _____

4. Reviewed By:

Finance Dept. on _____

By: _____

Comments: _____

City Attorney on _____

By: _____

Comments: _____

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE: _____

Action ☐

Consent ☐

Hearing ☐

Filing ☐

Presentation ☐

Other(specify) _____ ☐

Reviewed by: City Clerk _____

Date _____

City Manager _____

Date _____

CITY COUNCIL AGENDA REPORT

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DELEGATING AUTHORITY AND ESTABLISHING PROCEDURES FOR INDUSTRIAL DISABILITY RETIREMENT DETERMINATION FOR EMPLOYEE MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS)

AGENDA DATE: November 17, 2009

PREPARED BY: Jennifer M. Lyon, City Attorney

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: 1. Remove item from the table.

2. Approve resolution to revise and update existing procedures regarding the City Manager's authority to determine whether a person is subject to industrial disability retirement.

FISCAL IMPACT: None

BACKGROUND INFORMATION: The City of Calexico has a contract with CalPERS under the Public Employee Retirement Law to provide retirement and pension related services to the City and its employees. Under the law, public safety employees injured on the job in a manner and to an extent that permanently prevents them from serving as public safety employees may apply for industrial disability retirement. If a member is so injured but does not apply, the City can apply on the employee's behalf for industrial disability retirement.

The City Council has the authority to determine whether an employee meets the criteria for industrial disability retirement. The City Council delegated this authority to the City Manager about fifteen years ago, however, the old resolution needs to be revised and updated. Section 21173 of the Government Code allows the Council to delegate this authority to the City Manager.

CURRENT DISCUSSION:

Delegating to the City Manager the authority to make industrial disability retirement decisions provides the City with significant benefits. The most important one of these benefits is that the Manager can make his determination without making employees' confidential health information public. Were an industrial disability retirement case to come to the Council, the Council would need to adopt a resolution describing the nature of an employee's disability in public. By adopting the attached resolution, the City can avoid this and keep the matter confidential to a certain extent.

A second benefit to delegating authority to the City Manager is that it is more likely that the City will be able to meet deadlines. After receipt of necessary information from CALPER, cities only have a limited time to amass additional health-related information about an employee, sometimes without the employee's cooperation, and hold a meeting with the employee to ensure the City extends its best efforts to accommodate the employee's disability.

Currently, the City Manager or his/her designee will meet with employees who are potentially subject to industrial disability retirement or otherwise review appropriate medical evidence and will determine if the employee may be accommodated. This Resolution continues this practice and determinations are made strictly upon reliable medical information.

This item was previously tabled by the Council on September 22, 2009. Staff requests that Council remove the item from the table and approve the attached Resolution.

Attachments: Resolution number 2009-_____

RESOLUTION NO. 2009-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DELEGATING AUTHORITY AND ESTABLISHING PROCEDURES FOR INDUSTRIAL DISABILITY RETIREMENT DETERMINATION FOR EMPLOYEE MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS)

WHEREAS, the City of Calexico (City) is a contracting Agency of the California Public Employees' Retirement System (CalPERS); and

WHEREAS, CalPERS requires that a contracting Agency adopt by resolution standardized procedures for making a determination if an employee has an industrial disability; and

WHEREAS, Public Employees' Retirement Law requires that a contracting Agency determine whether an employee of such agency in employment in which s/he is classified as a local safety member (and miscellaneous members covered by contract (Government Code Section 21151) is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such Law; and

WHEREAS, the City of Calexico has determined upon legal advice that it may delegate authority under section 21173 of the Government Code to make such determinations to the incumbent of the position of City Manager or the City Manager's designee.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Calexico, California, as follows:

1. That the City of Calexico does hereby delegate to the incumbent of the position of City Manager or the City Manager's designee, the authority to make determinations under section 21152(c) of the Government Code on behalf of the City, of disability and whether such disability is industrial and to certify such determinations and all other necessary information to the Public Employees' Retirement Systems; and
2. That such incumbent be and is authorized to make application on behalf of the Agency for disability retirement of all employees and to initiate requests for reinstatement of such employees who are retired for disability; and
3. That following the filing of an application for industrial disability retirement by an employee member under the California Public Employees' Retirement System the following procedures shall be employed:
 - a. An initial determination will be made by the City upon medical and other available evidence offered by either the applicant or the City to determine whether the applicant is incapacitated from the performance of duty. The determination

shall be made within six months of the date of the receipt by the City from CalPERS unless this time requirement is waived by the applicant. Said determination shall be made by the City Manager or the City Manager's designee.

1. If it is determined by the City that the applicant is incapacitated, and the incapacity is industrial, the City Manager (or City Manager's designee) will so certify to CalPERS.
 2. If it is determined that the applicant is incapacitated but that the cause of the incapacity is nonindustrial, the City Manager (or City Manager's designee) will so certify to CalPERS.
 3. If it is determined that the applicant is incapacitated, but the applicant contends that the cause of disability is industrial, the applicant may petition the Worker's Compensation Appeals Board (WCAB) for a Finding of Fact determining causation. If the WCAB determines the cause of incapacity to be industrial, or nonindustrial, the City will so certify to CalPERS.
 4. If the City determines that the applicant is not incapacitated from the performance of duty, it shall notify the applicant and CalPERS of this determination. The City shall notify the applicant by certified mail (return receipt requested) or by personal service of his/her right to appeal their decision and request a hearing within thirty calendar days of the notice.
- b. If the applicant requests a hearing per section (a)(4) of this Resolution, the hearing shall be held in conformity with the Administrative Procedures Act. When an applicant requests a hearing, the City will notify CalPERS. The City will also notify the Office of Administrative Hearings and will request a hearing date and a prehearing conference with an Administrative Law Judge. The applicant will be informed that the hearing will be held at the time and place designated by the Office of Administrative Hearings which shall set a hearing date and a prehearing conference.
1. The hearing shall be conducted before an Administrative Law Judge who will prepare a proposed decision and findings of fact for review by the City Council.
 2. An administrative record shall be generated at the hearing pursuant to the Administrative Procedures Act. All testimony shall be recorded by a Certified Shorthand Reporter or otherwise recorded.
 3. Following the hearing, a decision and findings of fact will be made by the City Council. The decision and findings will be served on the applicant by certified mail and CalPERS will be notified.

4. If the applicant is found to be incapacitated, the City shall so certify to CalPERS. If the applicant is found not to be incapacitated, the applicant will be further advised that s/he has thirty (30) calendar days to seek judicial review. Such review is the means of filing a Petition of Writ of Mandate in the Superior Court of Imperial County.
5. Upon receipt of notice that the applicant has filed a Petition for Writ of Mandate in the Superior Court of Imperial County, or upon expiration of thirty (30) calendar days where applicant has not filed a Petition for Writ of Mandate, the City will notify CalPERS.
6. Upon receipt of a Petition for Writ of Mandate filed by applicant, the City will notify CalPERS.

PASSED, APPROVED AND ADOPTED this 17th day of November, 2009, at a regular meeting of the City Council of the City of Calexico, California, by the following vote:

DAVID OUZAN, Mayor

ATTEST:

LOURDES CORDOVA, City Clerk

APPROVED AS TO FORM:

JENNIFER M. LYON, City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS.
CITY OF CALEXICO)

I, LOURDES CORDOVA, CITY CLERK OF THE CITY OF CALEXICO, DO HEREBY
CERTIFY THAT THE ABOVE FOREGOING RESOLUTION NO. 2009- ___, WAS DULY
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CALEXICO ON
THIS ___ DAY OF _____, 2009 BY THE FOLLOWING VOTE, TO WIT:

AYES:
NOES:
ABSENT:

LOURDES CORDOVA, CITY CLERK